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Discrimination and Protection
of Minorities
Working Group on Contemporary Forms
of Slavery
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REVIEW OF DEVELOPMENTS IN THE FIELD OF CONTEMPORARY FORMS OF SLAVERY AND MEASURES TO PREVENT AND ERADICATE ALL CONTEMPORARY FORMS OF SLAVERY

ORGAN TRANSPLANT

Report of the Secretary-General prepared pursuant to Sub-Commission resolution 1994/5

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Introduction

1. In its resolution 1994/5, paragraph 8, the Sub-Commission on Prevention of Discrimination and Protection of Minorities requested the Secretary-General to invite again all Governments, United Nations organizations and bodies, including the United Nations Children's Fund, the specialized agencies, in particular the World Health Organization, the International Criminal Police Organization and all relevant non-governmental organizations, including scientific and medical associations, to pursue their investigation of allegations that children are victims of, or are even killed for, the removal of organs for the purpose of commercial transplants and to indicate any measures taken to counteract this practice wherever it exists, with a view to presenting a report to the Working Group at its twentieth session.

2. Consequently, the Secretary-General sent, on 2 December 1994, notes verbales and letters to Governments and the above-mentioned United Nations bodies and organizations. The replies so far received are contained in the present document.

I. GOVERNMENTS

Nepal

[Original: English]
[30 January 1995]

3. The Government of Nepal stated that it had no knowledge or information on the alleged cases of removal of organs from children inside the Kingdom. Nevertheless, it will pursue an investigation into such allegations.

II. UNITED NATIONS ORGANS AND BODIES

A. United Nations Office at Vienna

[Original: English]
[14 February 1995]

4. The United Nations Crime Prevention and Criminal Justice Programme is concerned about the reports and allegations that children, and indeed any persons, have been victimized for the trafficking in body parts.

5. In its resolution 3/2, entitled "International traffic in minors", the Commission on Crime Prevention and Criminal Justice decided that international traffic in minors should be considered by the Commission in the context of the discussion on the question of organized transnational crime.

6. Furthermore, the Secretary-General in his report on the impact of organized criminal activities upon society at large (E/CN.15/1993/3) noted that at present, no country was able to meet the demand for organs adequately, and waiting lists were growing at a faster rate than the supply. For instance, an estimated 85 per cent of the patients accepted for dialysis in Ireland received transplants in the first year, whereas in the United States

only about 25 per cent of such cases resulted in transplants and in Japan the figure was less than 10 per cent. In the United States alone, statistics indicated that, as of June 1991, 24,000 people were on waiting-lists for transplants. In Australia, the number of people requiring kidney transplants was about 2,000 at the present time, with about 400 transplants performed each year. The average waiting time for such a transplant was three years. This was a situation which organized crime was bound to exploit, as resort to exploitative and criminal practices could generate high profits where the number of available organs was insufficient. The Director of the Australian Institute of Criminology was quoted as saying, "Not surprisingly, a black market ... has developed, in which organs fetch high prices". The large number of destitute and homeless persons, including children, found in urban areas, particularly in developing countries, provided a source of such transplant organs. The black market was bound to grow as technological advances extended the preservation of organs after removal, so that transport could be provided over long distances.

B. World Health Organization

[Original: English]
[20 January 1995]

7. Although WHO has not endeavoured to compile information concerning the validity or otherwise of allegations that children are victims of the removal of organs for the purpose of commercial transplants, it has been actively concerned with monitoring international and national measures taken to counteract any forms of commerce in human organs, including any commercial transactions involving children. WHO's activities have been based on the mandate given to the Director-General in the field of organ transplantation by, in particular, World Health Assembly resolution WHA44.25 adopted on 13 May 1991.

8. WHO offices endeavour to monitor draft legislation on organ transplantation, with particular reference to provisions that address the issue of commerce. As a matter of example, a draft law on organ transplantation, submitted to the Japanese Diet on 12 April 1994, includes a detailed section 11 entitled "Prohibition on trade in organs" which reads as follows:

> "1. No person may accept or demand financial compensation for providing or having provided organs for transplantation purposes, nor make an agreement for such compensation.
>
> "2. No person may provide or demand financial compensation for the present or future acceptance of the supply of organs for transplantation purposes, nor make an agreement for such compensation.
>
> "3. No person may accept or demand financial compensation for serving or having served as an intermediary for the supply of organs for transplantation purposes, nor make an agreement for such compensation.

"4. No person may supply or demand financial compensation for the present or future acceptance of the action of an intermediary with a view to the supply, or acceptance of the supply, of organs for transplantation purposes.

"5. No person may remove or use organs for transplantation purposes if he is aware that the said organs have been the subject of a violation of any of the provisions of the preceding subsections.

"6. The compensation referred to in subsections 1-4 of this section does not include the costs of transportation or correspondence, or of the removal, preservation, and transfer of organs for transplantation purposes, the cost of transplantation, or the expenses normally considered as necessary for the supply, or acceptance of the supply, of organs for transplantation purposes, or the services of intermediaries in such procedures."

9. Section 12 of the draft law provides for the issuance of authorization by the Ministry of Health and Social Welfare to persons acting professionally as intermediaries for the supply of cadaveric organs for transplantation purposes. Details are given in sections 20 and 21 of the penalties that apply in the event of violation of the provisions of sections 11 and 12 respectively.

10. WHO publishes in the "International Digest of Health Legislation" examples of recent legislation on organ transplantation addressing the matter of commerce in human organs.

11. WHO has also been carefully monitoring international initiatives to combat commerce in human organs. In that regard, the General Assembly of the World Medical Association adopted a resolution entitled "Physicians' conduct concerning human organ transplantation" at Stockholm in September 1994, stating:

"Whereas there is a significant concern at the increasing number of reports of physicians participating in the transplantation of human organs or tissue taken from:

- the bodies of prisoners executed in application of a death sentence without previously obtaining their consent or giving them an opportunity to refuse; or

- the bodies of handicapped persons whose deaths are believed to have been expedited to facilitate the harvesting of their organs; or

- the bodies of poor people who have agreed to part with their organs for commercial purposes; or

- the bodies of young children kidnapped for this purpose; and

whereas in such cases the participation of physicians in direct contravention of the guidelines enunciated by the World Medical

Association in its Declaration on Human Organ Transplantation adopted in October 1987.

"Therefore be it resolved that the World Medical Association solemnly reaffirms those guidelines and calls upon all national medical associations to uphold them, and in the case of infraction of these guidelines to severely discipline the physicians involved."

12. Moreover, in the course of the XVth World Congress of the Transplantation Society held at Kyoto, Japan, from 28 August to 2 September 1994, the Society adopted a series of recommendations which read as follows:

"The Transplantation Society recommends:

"(i) All countries should enact legislation forbidding all commercial trafficking in tissues and organs.

"(ii) All countries should define brain death and its diagnosis and enshrine this concept in law including the requirement that the assessors of brain death are independent and free from and direct interest in the transplant procedure.

"(iii) All countries should ensure effective monitoring of tissue and organ transplantation through:

"(a) proper regulation of mortuary activity and of tissue banks;

"(b) certification of brain death by independent assessors;

"(c) signed and date certification by the surgeon removing the tissues and organs, stating (1) he/she witnessed the certification of brain death and (2) which tissues and organs have been removed. Copies of this documentation must be forwarded together with all tissues and organs;

"(d) full certification by the implanting surgeon, stating that (1) he/she has inspected the retrieval documentation and deemed it satisfactory and (2) has recorded the implantation of stated organs into specified individuals;

"(e) ensuring that tissues and organs not used are accounted for to relevant authorities;

"(f) the introduction of methods of registering and tracking all donors;

"(g) the approval and certification of transplant centres and teams by relevant government and/or medical professional authorities.

"The Transplantation Society further states that with respect to more general issues, its position remains unchanged:

"(a) organs and tissues should be freely given without commercial consideration or financial profit;

"(b) consent should be obtained;

"(c) Transplantation Society members should not be involved in obtaining or transplanting organs from executed criminals."

13. WHO draws the attention of the Working Group on Contemporary Forms of Slavery to the draft Bioethics Convention and the draft protocol on organ transplants drafted under the auspices of the Council of Europe in Strasbourg.

III. INTERGOVERNMENTAL ORGANIZATIONS

International Criminal Police Organization

[Original: English]
[19 January 1995]

14. INTERPOL declared that specific information has been provided by INTERPOL in Brazil which indicated that Brazilian children were adopted by foreign couples allegedly for the purpose of trafficking in human organs.

15. The sale of human organs is a very sensitive issue and countries affected by this form of criminal activity (such as South America and a number of Eastern European countries) are very reluctant to send relevant information on reported cases.